

CANADA / JUDGMENT

McCoppen v. Stewart

2024 BCSC 1533

COURT

Supreme Court of British Columbia

DECIDED

22 August 2024

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2024 BCSC 1533 McCoppen v. Stewart IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: McCoppen v. Stewart, 2024 BCSC 1533 Date: 20240822 Docket: 61764 Registry: Kamloops Between: Julie Kathleen McCoppen Claimant And: Jamie John Paton Stewart Respondent Before: The Honourable Justice Branch Reasons for Judgment Counsel for the Claimant: R. Lammers Counsel for the Respondent: A. Rekdale Place and Date of Hearing: Kamloops, B.C. June 19, 2024 Place and Date of Judgment: Kamloops, B.C. August 22, 2024 Table of Contents I. INTRODUCTION.. 3 II. BACKGROUND.. 3 Claimant's Financial Situation. 4 Respondent's Financial Situation. 5 Litigation Costs. 7 III. RELIEF REQUESTED.. 7 IV. ANALYSIS. 10 A. Support 10

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[1] In this application, the claimant applies for interim child and spousal support and a series of document production orders. She also requests an advance for litigation expenses and that a fine be imposed on the respondent because of his lack of timely disclosure of financial information.

[2] I award child and spousal support on an interim basis as set out below. I also conclude that (1) the requested production orders are largely appropriate, (2) a litigation expenses advance should issue on certain terms, and (3) a fine should be imposed on the respondent. II. BACKGROUND

[3] The parties began living together on January 1, 2015. They were never married.

[4] The parties have two children: one born in May 2016 and the other in April 2018. The family lived on Linfield Drive in Kamloops (the "Home").

- [5] The claimant did not work outside of the Home for most of the parties' relationship. The respondent appears to have been quite controlling over the family's income and expenses. The Home has always been registered in the sole name of the respondent. Within a month of beginning their relationship, the respondent took over responsibility for the claimant's expenses. The claimant says that the respondent also refused to allow her to have credit cards or loans in her own name. However, he simultaneously declined to assist her with her debt repayment responsibilities. These arrangements allegedly left the claimant in a poor credit and debt situation once the relationship ended.
- [6] The claimant did limited paid work during the relationship as a doula and personal trainer. She had five to ten doula clients per year, with each client paying between \$500-\$800.
- [7] The claimant was paid a salary by one of the respondent's corporations for a time before the birth of their children, allegedly to allow her to qualify for government maternity benefits. The claimant says that she did not do any work to justify this salary. She did not even receive her paycheques, which the respondent controlled.
- [8] The parties separated on May 10, 2021. After separation, the claimant resided in the Home. The respondent continued to pay for the expenses associated with the Home, including utilities, taxes and mortgage payments. The latter two expenses totalled approximately \$2,500 per month. The respondent also continued to pay the loan on the claimant's vehicle until it was paid off in December 2023. After the loan was paid off, the respondent began paying the claimant \$1,000 per month, which was said to be for child support.
- [9] The parties have parented the children pursuant to a shared parenting schedule since separation.
- [10] The claimant filed a Notice of Family Claim on January 10, 2023.
- [11] A Judicial Case Conference ("JCC") was held on May 31, 2023. The respondent failed to file a financial statement prior to the JCC. An order was made that the respondent prepare a financial statement, including all attachments, by June 16, 2023. The respondent served a financial statement on June 15, 2023, but it was missing many of the required attachments, including tax returns, notice of assessments, and corporate financial statements.
- [12] To date, there have been no court orders for child or spousal support. Claimant's Financial Situation
- [13] Following separation, from April-September 2022 the claimant worked in a marketing position for a friend's company. She was paid a salary equivalent to approximately \$100,000 per year. She gave evidence that her friend's company was not able to continue paying her, and she was laid off. She was then on Employment Insurance for a few months. She attempted to find marketing work but was unsuccessful given that she, based on her own evidence, did not have the necessary qualifications. The claimant says she had only been hired in the earlier position because of her personal relationship with the company's owner.

- [14] The claimant then refocused her employment efforts on a child photography business called "Bare Life Photography". She also continued to provide limited doula services.
- [15] The claimant's reported income since separation has been as follows:
- a) In 2021, her reported income was \$48,167, all of which came from self-employment.
 - b) In 2022, her reported total income was \$92,433, made up of the following components:
 - i. \$52,836 from employment income; ii. \$32,054 from self-employment income. iii. \$4,466 from EI benefits; and iv. \$3,077 from other sources.
 - c) In 2023, her reported total income was \$25,610:
 - i. \$7,656 from EI benefits; ii. \$10,754 from self-employment income; and iii. \$7,200 from rental income.
- Respondent's Financial Situation
- [16] Since the beginning of their relationship, the respondent has operated a company called Stewart Mortgage Corp. ("SMC"), which lends mortgage funds on a high-interest basis. SMC's website states that they have "[over] \$35 Million in Private Mortgages Under Administration". The respondent also has an ownership interest in a series of other corporations that have not yet been valued.
- [17] The respondent's financial statement from June 15, 2023, only contains a personal tax return for 2020. His 2020 return shows an income of \$53,764 after an array of deductions from a higher gross level. His 2023 financial statement reports a current income of \$186,970. The respondent simultaneously claims to have total annual expenses of \$300,833.88.
- [18] The respondent's evidence is that he has not filed tax returns since 2020, nor has he completed financial statements for SMC or his other controlled corporations since separation. He says his accountant is currently working on these.
- [19] The respondent's financial statement discloses \$4,701,473.00 in assets in his name against \$6,914,161.13 in debts.
- [20] The respondent sold a townhome in Sun Peaks (12-3280 Village Way) for \$1,150,000 in February 2021. This disposition was not listed on his financial statement, and he provided no documentary disclosure about the terms of this disposition.
- [21] The respondent's financial statement shows that he owns property at 1-3280 Village Way, Sun Peaks ("Sun Peaks #2"), with a value of \$1,691,000 against a mortgage of \$600,000.
- [22] Given the limited financial disclosure by the respondent and the inconsistency between the respondent's reported income and expenses, the claimant conducted various investigations into the respondent's lifestyle. The claimant notes that, based on the respondent's financial statement and social media posts, the respondent has incurred expenses at a level indicating substantial disposable income, such as season tickets for the Seattle Seahawks and vacations to various Canadian and international locations.
- Litigation Costs

[23] Given her request for an advance of \$150,000 to fund litigation expenses, the claimant provided an estimate of her projected necessary litigation costs:

- a) property appraisals - \$5,000 to \$10,000;
- b) business valuation - \$25,000 - \$35,000;
- c) guideline income valuation report - \$10,000;
- d) possible mediation fees - \$2,000 to \$4,000; and
- e) legal fees - \$50,000 to \$100,000. III. RELIEF REQUESTED

[24] As noted, the claimant's application seeks a lengthy list of relief. Certain aspects were no longer being pursued by the hearing, so I have removed them from the list below:

1. An Order pursuant to s. 149 of the Family Law Act that the respondent pay interim child support for the support of the Children to the claimant in an amount commensurate with the Federal Child Support Guidelines.
2. An Order for the payment of retroactive child support in an amount to be determined by the Court on a lump sum or periodic basis.
3. An Order for the payment of the Children's s. 7 expenses in accordance with the proportionate shares of the parties' incomes.
4. An Order that the respondent pay retroactive child support to the claimant in an amount to be determined;
5. An Order pursuant to s. 165 of the Family Law Act that the respondent pay interim spousal support to the claimant in an amount commensurate with the Spousal Support Advisory Guidelines.
6. An Order pursuant to s. 19 of the Federal Child Support Guidelines that income be imputed to the respondent for the purposes of calculating his income, on account of the lack of financial disclosure provided with respect to his income to date.
7. An Order that the claimant be at liberty to re-apply for interim child and spousal support on an interim, but "denovo" basis once complete financial disclosure has been provided in accordance with the terms of this Order. Advance of Funds
8. An Order pursuant to s. 89 of the Family Law Act that the respondent pay an interim distribution of family property to the claimant in the amount of \$150,000.
9. In the alternative, if the respondent does not pay the advance within 21 days of the date of this Order that either the property at 1-3280 Village Way, Sun Peaks, or at 1238 Rockcress Drive, Kamloops shall be listed for sale on terms as determined by this Court. Disclosure

10. An Order pursuant to Supreme Court Family Rule 5-1 that the respondent prepare and file an updated Financial Statement in Form F8 to include all documents listed on page 2 of the form.
12. An Order pursuant to Supreme Court Family Rule 5-1 and 9-1 for the production of the following documents within 14 days of the making of this Order:
 - (a) With respect to Stewart Mortgage Corp.: iii. Financial Statements for the corporation for the years covering 2020 to the present date (including year-ending 2023). iv. A complete copy of the General Ledger for all periods from January 1, 2021 to present date.
 - (b) With respect to Kam-Mic Investment Corp.: ii. A copy of the General Ledger for all periods from January 1, 2021 to present date. iii. Financial Statement for year ending August 31, 2023; iv. A copy of a shareholder agreement, if any.
 - (c) With respect to 0752063 BC Ltd.:
 - i. a copy of any lending agreement(s) with this company, if one exists.
 - (d) Disclosure relating to the "British Columbia Interior Investment Partnership" including:
 - i. A copy of the partnership agreement; and ii. A copy of any financial statement that may exist from 2018 to present date.
 - (e) With respect to 1-3280 Village Way, Sun Peaks: ii. Annual Mortgage Statements for each year ending 2019-2023.
 - (f) With respect to #12-3280 Village Way, Sun Peaks:
 - i. A copy of the conveyance file to include:
 1. Statement of adjustments;
 2. Evidence of down payment (bank draft, cancelled cheque etc) in relation to its purchase; ii. online summary print out of short-term rental income received (ie Airbnb/VRBO and/or property management income and expenses statements if applicable).
 - (g) With respect to 1238 Rockcress Drive, Kamloops:
 - i. A copy of the conveyance file to include:
 1. Statement of adjustments;
 2. Evidence of down payment (bank draft, cancelled cheque etc); ii. Annual mortgage statements for each year ending 2022 and 2023.
 - (h) With respect to 2207 Linfield Drive, Kamloops;
 - i. A copy of the conveyance file in Mr. Stewart's possession; ii. Annual mortgage statements for each year ending 2015 to 2019 and 2023;

- (i) With respect to Mr. Stewart's personal financial records, a copy of
 - i. every periodic statement (monthly, quarterly, as the case may be) for the following bank accounts, investment accounts and credit accounts for the time period of January 1, 2021 (5 months before separation) to present date:
 - 1. Valley First chequing account ending 6049;
 - 2. Any other chequing or savings account held by the respondent (either jointly or solely);
 - 3. Ford Credit account (if it is in Mr. Stewart's personal name);
 - 4. Documents evidencing 2018 VW Atlas loan in Mr. Stewart's personal name;
 - 5. Transactional history relating to loan from 0752063 BC Ltd. for the specified period of January 1, 2021 to the present date;
 - 6. Transactional history relating the loan from Kam-Mic Investment Corporation (which may be in the form of a ledger report) for the specified time period.
 - 7. A list all of Mr. Stewart's credit cards that he has in his name at this time, and regardless if they have a zero balance, and each of the periodic statements for each card for the time period of January 1, 2021 to the present date
 - (j) With respect to the "Kam-Mic Investment Corp" loan of \$2,625,000 cited in Mr. Stewart's financial statement:
 - i. details of this loan including a copy of any loan agreement, repayment structure, what the loan was used for.
 - (k) A complete copy of Mr. Stewart's 2021, 2022 and 2023 T1 General Tax return with all schedules and attachments.
 - (l) Mr. Stewart's 2021, 2022 and 2023 Notice of Assessments and any Re-Assessments, if applicable.
- 14. If it is the case that the respondent has not prepared any required tax return or corporate financial statement, an Order that he file any outstanding tax returns and prepare any outstanding corporate financial statement within 14 days of the granting of this Order.
Appointment of Business Valuator
- 15. An Order pursuant to Rule 13-4(3) for the appointment of a joint business valuation expert for the purpose of valuing the corporate family assets in this case;
- 16. An Order that the respondent pay the initial cost of the report with liberty to seek contribution from the claimant for the cost of the report in the overall adjustment of family property; Penalty

17. An Order pursuant to s. 213(2)(d)(ii) of the Family Law Act that the respondent pay an amount not exceeding \$5,000 payable to the benefit of the claimant for his failure to comply with his obligations to disclose information in accordance with the Supreme Court Family Rules in accordance with s. 213(1)(a) and (b). Costs
 18. An Order for Costs, increased Costs, or Special Costs to the claimant, in any event of the cause. IV. ANALYSIS A. Support
- [25] This Court recently reviewed the general principles relevant to the determination of interim support in *Minami v. Chu*, 2024 BCSC 40:
- [56] The principles that apply to interim support applications were summarized by Master Keighley in *Robles v. Kuhn*, 2009 BCSC 1163 at para. 12:
1. On applications for interim support the applicant's needs and the Respondent's ability to pay assume greater significance.
 2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payer's ability to pay warrants it.
 3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best.
 4. The courts should not unduly emphasize any one of the statutory considerations above others.
 5. On interim applications the need to achieve economic self-sufficiency is often of less significance.
 6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise.
 7. Interim support should only be ordered where it can be said a prima facie case for entitlement has been made out. [Citations omitted.]
- [26] The appropriate support levels largely turn on the income for each spouse.
1. Respondent's Income
- [27] The respondent has put the claimant and the Court in a difficult position through his failure to file income tax returns or prepare corporate financial statements for several years.
- [28] This failure effectively drives the Court towards alternate means of determining his income for interim support purposes, particularly given that his expenses suggest that his income may not be fairly reported on his most recent financial statement.

- [29] This case has several parallels to this Court's recent decision in *Minami*. In that case, in the absence of adequate information on the income earned, the Court adopted an approach largely based on the party's claimed expenses. The Court took the declared expenses and grossed them up to account for the income taxes that should have been paid as the funds were extracted from the party's businesses. The Court concluded:
- [58] Per s. 19 of the Guidelines, a court may impute income to a spouse that it considers appropriate in the circumstances. Section 19(1) outlines numerous circumstances that justify imputation, including when the payor has diverted income or failed to provide income information when under a legal obligation to do so. The court's discretion to impute income is broad and is not limited to the enumerated heads in s. 19: *T.L.T. v. R.E.S.*, 2022 BCSC 598, at para. 65 [T.L.T.]. The claimant bears the onus of showing that income should be imputed: *Windle v. Windle*, 2010 BCSC 18 at para. 88. However, where the payor claims to earn a low income, but his spending pattern suggests a higher income, the onus is on the payor to present his affairs in an understandable manner: *Sullivan v. Struck*, 2015 BCCA 521, at para. 57. The claimant argues that the Court should impute the respondent's income because there has been inadequate financial disclosure, and his tax returns fail to capture his financial situation properly.
- [59] An imputation of income can be employed to prevent sophisticated payor spouses from reducing their support obligations by using deferred forms of compensation. The Court may consider a party's assets, investments, and lifestyle, as well as his business acumen, contacts, and expertise
- [60] Courts have imputed income by:
- a) Using a grossed-up version of the payor's expenses: *Akkor v. Roulston*, 2009 BCSC 1584 at paras. 74, 78; *T.L.T.* at para. 84;
 - b) Investigating the deposits into the payor's bank account: *Van Deventer v. Van Deventer*, 2000 BCCA 9 at paras. 12-15; *Sorya v. Parmar*, 2012 BCSC 129 at paras. 19-24;
 - c) Using evidence of lifestyle and spending patterns: *Sullivan* at paras. 56-73.
 - d) Examining the payor's last known financial circumstances: *L-L.W. v. L.K.W.*, 2003 BCSC 1083 at para. 11;
 - e) Reviewing the parties' respective means and needs: *M.E.C. v. D.E.J.*, 2006 BCSC 1802 at para. 21; *Wilson v. Wilson*, 2009 BCSC 1777 at paras. 5-10
- [63] In the present case, the respondent has structured his affairs in a manner that makes it extremely difficult to fix the appropriate income on an interim application. Indeed, I expect that this task will be a difficult challenge for the trial judge. Ultimately, the respondent's evidence and arguments fail to adequately explain how the parties' tremendous spending rate could have been sustained either in the past or presently

[64] I agree with the claimant that the "expense gross-up" approach in T.L.T. is a good starting point for the necessary imputation

[30] The claimant indicated that she was prepared to accept an attribution of \$400,000 in income to the respondent. I accept that this is a reasonable figure, given that grossing up the claimed expenses of \$300,833 alone would yield a figure over \$530,000. The respondent's suggestion that the Court use only \$180,000 for his income is wholly unrealistic in light of his spending pattern and lack of disclosure.

2. Claimant's Income

[31] Although the claimant's income tax return for 2023 shows an income of \$25,106.41, the claimant agreed that she should be attributed \$40,000. I accept that this is a reasonable concession. The respondent's suggestion that she be attributed \$80,000 is not reflective of her longer-term earnings history.

3. Going Forward Support

[32] Using \$400,000 in income for the respondent and \$40,000 for the claimant yields an offset of \$4,474 payable by the respondent for child support. I make that award on an interim going forward basis.

[33] In terms of spousal support, those same income figures yield a midpoint of \$7,752 pursuant to the Spousal Support Advisory Guidelines. I find that this would be a reasonable amount for interim spousal support.

[34] I clarify that, with this order, the respondent does not also bear a legal responsibility to pay for the mortgage, utilities or taxes associated with the Home. I find that these should now be borne by the claimant on an interim going forward basis given that (1) the respondent is bearing his own living expenses outside the Home, including his responsibility for a new child with a new partner, and (2) the claimant is residing in the Home. Any Home expenses incurred by either party, both historically and going forward, should be treated as having been made on an interim without prejudice basis. Furthermore, if such expenses become too burdensome for the claimant, the claimant may obviously apply for an order for sale.

4. Retroactive Support Award

[35] The way the parties have managed their financial affairs since separation makes any assessment of an appropriate retroactive award extremely difficult. As noted above, the respondent has largely not formally paid child or spousal support, but he has made substantial contributions to the children's well-being through his payment of expenses for the Home, as well as through other payments on their behalf. Moreover, because it is not clear how the Home will be addressed after trial, there is an additional level of complexity associated with the process of crediting any payments made in relation to the Home towards support.

- [36] The claimant acknowledged that the situation was difficult and suggested that perhaps there simply be an undesignated retroactive award of \$15,000.
- [37] In my view, any attempt to determine an appropriate retroactive award at this stage of the litigation would be hazardous. I find that the most appropriate order to make at this time is to adjourn the determination of the appropriate retroactive award until a later date when there is better and more complete document production, and when there is hopefully greater certainty about the ownership of the Home. It may be that the appropriate time to resolve this issue may only be at trial. B. Litigation Expense Advance
- [38] As noted, the claimant requests an interim award of \$150,000 for litigation expenses under s.89 of the Family Law Act, S.B.C. 2011, c. 25 ("Act").
- [39] I accept that the claimant has provided a reasonable estimate of her projected expenses. The challenge for the Court is that it is not entirely clear where any such funds could come from, given that the respondent represents in his financial statement that he is substantially "underwater", and the Court has already imposed a further financial burden on him through the support awards.
- [40] The respondent did offer one potential solution to this quandary. He indicated that he was prepared to sell Sun Peaks #2, so long as he is also given the right to withdraw \$150,000 from the equity of such a sale for his own litigation expenses.
- [41] I accept that this is a reasonable solution based on the present lay of the land.
- [42] As such, I order that the respondent make best efforts to sell Sun Peaks #2 as soon as reasonably practicable, and that the first \$300,000 in net equity from such a sale be divided equally between the parties, which amounts are to be used exclusively for their respective litigation expenses. If no \$150,000 distribution is made to the claimant within six months, the claimant has leave to bring forward this aspect of the application again. C. Document Production
- [43] The production the claimant sought, which is outlined in items 10 and 12-14 of the relief requested, is granted, subject to the following:
- a) The mere fact that I have granted this order does not prevent the respondent from taking the position that certain of these requests have already been satisfied;
 - b) I give the respondent 60 days to comply with any requests;
 - c) In relation to 12(b), given that the respondent is only one of many shareholders in this company, the respondent shall only be required to request that the corporation produce such records;
 - d) In relation to 12(c) and 12(i)5-6, I would modify the "lending agreement(s)" and "transactional history" language respectively to the language proposed by the respondent, i.e. "the borrower's statement of accounts or contracts covering any loans";

- e) I decline to grant 12(d) given that there is evidence that the respondent no longer has anything to do with this partnership;
- f) In relation to the Rockcress property referred to at 12(g), I confirm that although this property was only purchased after separation, the claimant submits that the production of this information may facilitate her arguments that the respondent has greater access to financial resources than he is representing. Given the problems noted above, I accept this basis for production.
- g) In relation to 12(i)5, the order shall be modified to refer only to the balance at the separation date and any transactions since separation. D. Imposition of a Fine
- [44] The claimant seeks an order that the respondent pay a fine under s.213(2)(d)(ii) of the Act given his failure to produce a full financial statement.
- [45] The respondent accepts that his financial statement was not prepared in compliance with the Rules, but he disputes that the imposition of a fine is necessary or appropriate.
- [46] Turning to the guiding principles laid down in *J.D.G. v. J.J.V.*, 2013 BCSC 1274 at paras. 25-30, I find that a fine of \$2,500 is appropriate in the circumstances. I would not consider this case as serious as *Nelson v. Woodward*, 2021 BCSC 1035, where Master Keighley ordered a \$3,500 fine under s.230 after being left with the impression that the respondent's litigation strategy was that of "scorched earth and non-compliance": para. 7. But this case justifies a larger fine than the \$1,000 imposed in *M.A.M. v D.L.L.*, 2018 BCSC 2114. In that case, there was late disclosure: the tax return was disclosed two months late and financial statements were disclosed 180 days late. In the present case, the respondent has entirely failed to produce a complete financial statement, including years of tax returns and financial statements despite a court order. The respondent's excuse that he has not filed tax returns or financial statements since 2020 is insufficient to invalidate a fine; he had ample opportunity to prepare and file the necessary returns in the 15 months since the JCC. E. Appointment of Business Valuator
- [47] The parties agreed that a business valuator should be appointed. They also agreed on the valuator. If, for any reason, that person is unable to accept the retainer, the parties should seek to agree on another candidate. Failing agreement, they may appear back before me to select the valuator.
- [48] The issue left with the Court was cost sharing. The claimant indicated that she was prepared to share the cost of this report if she received the litigation expense advance noted above. Although I have modified the terms sought in this respect, I find that equal sharing would be appropriate so long as she has been paid the advance by the time the business valuator's account is received. If she has not received the advance by the time the valuator's account is rendered, then the cost should be shared in proportion to the incomes I have used above, which would have the claimant paying nine percent and the respondent paying 91 percent. This order should also hopefully encourage the prompt disposition of Sun Peaks #2. V.

CONCLUSION

[49] If the parties are unable to agree on costs, they may schedule a further video attendance before me. "The Honourable Mr. Justice Branch"

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Prepared on 26 October 2026 · Esheria